



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2018-0596; FRL-9986-94-Region 10]

Air Plan Approval; OR: Lane County Outdoor Burning and Enforcement Procedure Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve and incorporate by reference (IBR) into the Oregon State Implementation Plan (SIP) the Lane Regional Air Protection Agency's (LRAPA) revised outdoor burning rule submitted by the Oregon Department of Environmental Quality (ODEQ) on July 19, 2018. The revised rule, as it applies in Lane County, Oregon, clarifies terminology and provides additional controls of outdoor burning activities, reducing particulate emissions and strengthening the Oregon SIP. In addition, the EPA proposes to approve but not IBR the enforcement procedures and civil penalties rule for LRAPA submitted by the ODEQ on September 25, 2018. The revised rule contains revisions that bring enforcement procedures and civil penalties rule into alignment with recent changes in Oregon State regulations.

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2018-0596, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [regulations.gov](https://www.regulations.gov). The EPA may publish

any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Christi Duboiski at (360) 753-9081, or *duboiski.christi@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

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I. Background

Each State has a Clean Air Act (CAA) State Implementation Plan (SIP), containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS) established for the criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, sulfur dioxide). The SIP contains such elements as air

pollution control regulations, emission inventories, attainment demonstrations, and enforcement mechanisms. The SIP is a compilation of these elements and is revised and updated by a State over time – to keep pace with Federal requirements and to address changing air quality issues in that State.

The Oregon Department of Environmental Quality (ODEQ) implements and enforces the Oregon SIP through rules set out in Chapter 340 of the Oregon Administrative Rules (OAR), Divisions 200 to 268, apply in all areas of the State, except where the Oregon Environmental Quality Commission (EQC) has designated Lane Regional Air Protection Agency (LRAPA) to administer rules within its area of jurisdiction.

LRAPA has been designated by the EQC to implement and enforce State rules in Lane County, and to adopt local rules that apply within Lane County. LRAPA may promulgate a local rule in lieu of a State rule provided: (1) it is as strict as the corresponding State rule; and (2) it has been submitted to and approved by the EQC. This delegation of authority to LRAPA in the Oregon SIP is consistent with CAA section 110(a)(2)(E) requirements for State and local air agencies.

On July 19, 2018 and September 25, 2018, the ODEQ and LRAPA submitted revisions to the Oregon SIP as it applies in Lane County. These changes update the LRAPA Title 47 outdoor burning rule providing clarification and additional controls of outdoor burning activities in Lane County and align the Title 15 enforcement procedure and civil penalties rule with recently approved State rules in OAR Chapter 340, Division 12 (80 FR 64346, October 23, 2015).

II. Evaluation of Revisions

A. Title 47: Outdoor Burning

LRAPA regulates outdoor burning throughout Lane County, Oregon, except for agricultural burning, forest slash burning permitted by the Oregon Department of Forestry or U.S. Forest Service, and fire department training burns. The LRAPA Title 47 outdoor burning rule, most recently approved by the EPA on October 23, 2015, is an element of the SIP strategy outlining how Oregon will meet Federal air quality standards to protect public health and the environment (80 FR 64346). In general, the revised LRAPA outdoor burning rule provides for additional controls of outdoor burning activities in Lane County, Oregon. In addition, the submitted revisions make clarifications, incorporate housekeeping changes that eliminate duplicative text, change the “open burning” reference to “outdoor burning”, separate the reference of Eugene-Springfield Urban Growth Boundary (ESUGB) to the Eugene Urban Growth Boundary (UGB) and the Springfield UGB (noting each as a separate and distinct UGB), clean up typographical errors, and format and renumber sections and paragraphs. The key substantive changes are discussed below.

General

LRAPA revised the general policy section of Title 47, Section 47-001 to clarify the outdoor burning rule applies in Lane County in accordance with OAR 340-264-0160(1). This State rule establishes the outdoor burning requirements in Lane County are not to be less stringent than Oregon’s rule and prohibits LRAPA from regulating agricultural outdoor burning. In addition, LRAPA added “bonfires” and “ecological conversion” to the list of outdoor burning categories to provide clarification and a more complete list of what types of permits LRAPA issues for outdoor burning,

Exemptions

LRAPA revised the agricultural outdoor burning exemption language in Section 47-005 to align with OAR 340-264-0040 and ORS 468A.020 and made clear that this type of burning is still subject to the requirements and prohibitions of local jurisdictions and the State Fire Marshal. The exemption for recreational fires on private property or in designated recreational areas was tightened in two ways: the prohibition on recreational fires on yellow and red home wood heating advisory days now extends from at least October through May (as opposed to November through February in the current SIP) and now applies in the Oakridge Urban Growth Boundary (in addition to within the Eugene and Springfield Urban Growth Boundaries and the city limits of Oakridge). Although outdoor barbequing remains exempt, woody yard trimmings, leaves and grass clippings may no longer be burned as fuel. Religious ceremonial fires remain exempt; however, LRAPA clarified the allowable size, location, and fuel source. Larger fires are to be permitted under the “Bonfire” requirement under Section 47-020 *Outdoor Burning Letter Permit*. LRAPA expects religious ceremonial fires to occur infrequently and the definition requires that such fires be controlled, be “integral to a religious ceremony or ritual,” and that prohibited materials not be burned.

Definitions

In general, the revisions to LRAPA’s definitions in Section 47-010 clarify the types of burn categories, and further define restrictions and burn boundaries. For example, the “bonfire” definition establishes the size of a controlled outdoor fire to be larger than 3 feet in diameter and 2 feet in height. This helps to distinguish between what is allowed as a bonfire, or what is considered “recreational” or “religious ceremonial”. LRAPA also clarified that a bonfire cannot serve as a disposal for prohibited materials listed in Section 47-015(1)(e). LRAPA bounded the definition of “religious ceremonial fire”, setting limits on pile size, defining materials that can

and cannot be burned and defining where the burn can take place. Finally, LRAPA defined “outdoor burning letter permit”, issued pursuant to Section 47-020, to authorize burning of select materials at a defined site and under certain conditions. These updates provide clarification designed to enhance the enforceability of the rule. We propose to approve the submitted revisions to Title 47 definitions because the changes strengthen the SIP and are consistent with the CAA.

Outdoor Burning Requirements

LRAPA Section 47-015 contains most of the general requirements for all outdoor burning and specific requirements for the following burn types: residential, construction and demolition, commercial, industrial, and forest slash. The general outdoor burning requirements have been made more stringent in many respects. First, subsection 47-015(1)(e) regarding prohibited materials has been expanded to broadly prohibit the burning of items which, when burned, normally emit dense smoke noxious odors, or hazardous air contaminants, and specifically adds cardboard, clothing and grass clippings to the list of such items. The prohibition on the outdoor burning of cardboard and clothing was included to be at least as stringent with OAR 340-264-0160. In addition, a new provision was added, Section 47-015(1)(i), which prohibits the outdoor burning in barrels throughout Lane County.

Residential outdoor burning is allowed only on approved burning days with the start and end times for burning set as part of the daily burning advisory issued by LRAPA. The previous start and end times, beginning at sunrise and extending until sunset, were eliminated to avoid misinterpretation of the hours set by the LRAPA outdoor burning advisory, which generally allows the burn to commence a minimum of several hours after sunrise and requires the burn to be extinguished at least several hours prior to sunset.

LRAPA also added and expanded several provisions defining outdoor burning limits for the cities of Eugene, Springfield, Oakridge and Lowell and their associated urban growth boundaries; and the cities of Coburg, Cottage Grove, Creswell, Dunes City, Junction City, Veneta and Westfir. For example, LRAPA expanded outdoor burning limits from the Eugene city limits to the Eugene UGB, except that outdoor burning of wood yard trimmings is allowed on lots of two acres or more. The outdoor burning prohibition for Springfield was expanded to include the UGB, except that outdoor burning of woody yard trimmings is allowed on lots of one half acre or more. The Oakridge outdoor burning boundary was also expanded to include the UGB. In addition, LRAPA added that outdoor burning within Florence city limits is prohibited per Florence city ordinance. These changes strengthen the previous rule, which only restricted the burning of woody yard trimmings within the Eugene and Springfield city limits and as otherwise prohibited by some city fire codes. LRAPA's approved burn days are still from March 1 through June 15 and October 1 through October 31. LRAPA also formalized the prohibition of the outdoor burning of grass clippings throughout Lane County; however, the outdoor burning of fallen leaves and woody yard trimmings is still allowed, subject to restrictions based on time and location.

In general, these revisions impose more stringent requirements on additional geographic areas, increasing the overall stringency of the restrictions on outdoor burning, and the EPA proposes to approve them as consistent with CAA requirements.

Letter Permits

Section 47-020 authorizes certain types of outdoor burning under letter permits issued by LRAPA. Section 47-020(2) has been amended, increasing the fees for letter permits issued for outdoor burning of standing vegetation from \$100 to \$1,000. A new provision in Section 47-

020(2) authorizes the Director to compromise on the permit fee, on a case by case basis, based on set factors. In addition, Subsection 47-020(4) was amended to increase the permit fee for outdoor burning from \$4 per cubic year to \$10 per cubic yard, with a minimum fee of \$100. The fee applies to all outdoor burning except for prescribed burning of standing vegetation, which is addressed in Section 47-010(2).

The EPA proposes to find the revised LRAPA Title 47 outdoor burning rule provides for additional controls on outdoor burning which are designed to reduce particulate emissions in Lane County and strengthen Oregon's SIP. Based on the EPA's review and analysis of the revised rule, the EPA is proposing to approve the submitted Title 47 revisions to the Oregon SIP for Lane County as meeting the requirements of section 110 of the Clean Air Act.

Rules not Appropriate for SIP Approval

Title 47 contains several provisions that are not appropriate for SIP approval, including but not limited to nuisance, fire safety, and Title V. The EPA's authority to approve SIPs extends to provisions related to attainment and maintenance of the NAAQS and carrying out other specific requirements of section 110 of the CAA. In this action, the EPA is not approving into the SIP the following provisions of Title 47 because they are inappropriate for SIP approval: LRAPA 47-010 – definition of "nuisance"; LRAPA 47-015(1)(d); LRAPA 47-015(1)(h); LRAPA 47-020(3); LRAPA 47-020(9)(i); and LRAPA 47-020(10) (80 FR 64346, October 23, 2015).

B. Title 15: Enforcement Procedure and Civil Penalties

Title 15 outlines enforcement procedures and civil penalty provisions that apply to air quality regulations implemented by LRAPA and approved by the EPA into the SIP. Title 15 provides the authority and procedures under which LRAPA notifies regulated entities of

violations, determines the appropriate penalties for violations, and assesses penalties for such violations.

LRAPA updated Title 15 to correspond to the State enforcement rule in OAR Chapter 340, Division 12, approved by the EPA on October 23, 2015 (80 FR 64346). LRAPA revisions implement legislative increases in statutory maximum penalties, align violation classifications and magnitudes with program priorities, and provide greater mitigating credit for correcting violations. In addition, the rules incorporate housekeeping changes that include eliminating duplicative text, changing references from “the Agency” to “LRAPA” and “open burning” to “outdoor burning”, formatting and renumbering the sections and paragraphs, and cleaning up typographical errors. The key substantive changes are discussed below.

Overall, LRAPA aligned its definitions with those in the corresponding State rule recently reviewed and approved by the EPA on October 23, 2015 (80 FR 64346). Key definition changes include adding definitions for “alleged violation”, “conduct”, “notice of civil penalty assessment”, “residential owner-occupant” and “willful” and removing the term “risk of harm”. To mirror the State’s definition, LRAPA revised the term “magnitude of the violation” by removing language that is procedural in nature. Detailed procedures are centralized in Section 15-030 *Civil Penalty Determination Procedure (Mitigating and Aggravating Factors)*. LRAPA also simplified the definition of “violation” to remove redundant language defining the three classes of violation (class I, II and III).

The submitted revisions also include several rule sections revised to be consistent with OAR Chapter 340, Division 12. LRAPA revised Section 15.018 *Notice of Permit Violations and Exceptions* to align with OAR 340-012-0038 by including language requiring no advance notice prior to assessment of a civil penalty if the permittee has an Air Contaminant Discharge Permit

(ACDP) condition that implements the SIP under the CAA and the permit violation would disqualify a State program from Federal approval or delegation.

Section 15.025 *Civil Penalty Matrices* was revised to align with State civil penalties in OAR 340-012-0140. The LRAPA penalty matrices and applications were updated to directly reflect Oregon's SIP-approved penalty amounts. LRAPA also amended Section 15.030 *Civil Penalty Determination* to provide the director the discretion to increase the penalty amount to \$25,000 per violation per day of violation to correspond with OAR 340-012-0160(4). In addition, the civil penalty formulation factors were updated to mirror language in OAR 340-012-0045 and OAR 340-012-0145. The submitted revisions increase the additional civil penalties for violations that pose an extreme hazard to public health or cause extensive environmental damage to mirror those in OAR 340-200-012-0155. As stated in Section 15-045, nothing in Title 15 is intended to preclude LRAPA from assessing a penalty of up to the maximum allowed for the violation by Oregon Revised Statutes 468 (ORS 468).

LRAPA also aligned Section 15.060 *Selected Magnitude Categories* with the State SIP-approved language in OAR 340-012-0135 by removing a duplicative table defining significant emission rate amounts for selected air pollutant magnitude determinations. This information can now be found in LRAPA's Title 12, Tables 2 and 3.

The EPA has reviewed the revisions to the LRAPA Title 15 enforcement procedures and civil penalties rule and finds the rule continues to provide LRAPA with adequate authority to enforce the SIP as required by section 110 of the Clean Air Act. The EPA therefore proposes to approve into the SIP the revisions to Title 15 to the extent the provisions relate to section 110 of the CAA and determining compliance with and for purposes of implementation of SIP-approved requirements. We note that we are not incorporating Title 15 by reference into the Code of

Federal Regulations (CFR). These types of rules are generally not incorporated by reference into the CFR because they may conflict with the EPA's independent administrative and enforcement procedures under the CAA.

III. Proposed Action

We propose to approve and incorporate by reference into the Oregon SIP the submitted revisions to the LRAPA Title 47 outdoor burning rule, Sections 001, 005, 010 (except the definition of "nuisance"), 015 (except (1)(d) and (1)(h)), and 020 (except (3), (9)(i), and (10)). These rules were State effective July 13, 2018 and submitted to the EPA by the ODEQ and LRAPA on July 19, 2018.

We also propose to approve, but not incorporate by reference, the submitted revisions to the LRAPA Title 15 enforcement procedures and civil penalty rule, Sections 001, 005, 015, 018, 020, 025, 030, 035, 040, 045, 055, 057, 060, and 065. These rules were State effective on September 14, 2018, and submitted by the ODEQ and LRAPA on September 25, 2018. They align LRAPA's Title 15 rule with the ODEQ's Division 12 and provide LRAPA with authority needed for SIP approval.

IV. Incorporation by Reference

In this document, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are proposing to incorporate by reference the provisions described above in Section III. Proposed Action. The EPA has made, and will continue to make, these documents generally available electronically through <https://www.regulations.gov> and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Oregon Notice Provision

Oregon Revised Statute 468.126 prohibits the ODEQ from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five-day period. By its terms, the statute does not apply to Oregon's title V program or to any program if application of the notice provision would disqualify the program from Federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The proposed SIP would not be approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 9, 2018.

Chris Hladick,
Regional Administrator,
Region 10.

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